

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 280/2008**

% Date of Decision : 5th March, 2009.

SHAKTI TOWERS P.LTD.
Through Petitioner
Mr. Dinesh Garg with
Ms. Rachna Agrawal,
Advocates

Versus

PROF. J.D.AGARWAL
Through Respondent
Mr. O.P. Khadaria,
Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J:- (Oral)

1. Present Contempt Petition has been filed under Sections 11 and 12 of Contempt of Courts Act, 1971 for wilful breach of undertaking dated 30th October, 2007 as well as order dated 5th February, 2007 passed in EFA No. 12/2007.

2. Mr. Dinesh Garg, learned Counsel for petitioner states that in pursuance to respondent's aforesaid undertaking, respondent had to hand over vacant peaceful physical possession of tenanted premises on or before 30th April, 2008, but he failed to do so. He further pointed out that respondent had, in fact, subsequent to the undertaking filed a suit being CS(OS) No. 1978/2008 seeking cancellation of conveyance deed dated 28th June, 2005 in respect of tenanted premises executed by DDA in favour of present

petitioner and also for a declaration that ejectment decree dated 16th September, 2004 was a nullity. Learned Counsel further stated that ejectment decree dated 16th September, 2004 was the foundation/basic proceeding on the basis of which EFA No. 12/2007 had been filed and it was only in this EFA that respondent had given his undertaking to vacate the tenanted premises by 30th April, 2008.

3. Mr. Garg also drew my attention to order dated 13th October, 2008 passed in execution petition No. 321/2007 which shows that respondent herein had filed an application for stay under Order 21 Rules 29 and 58 read with Section 151 CPC for stay of warrant of possession issued in favour of petitioner with regard to tenanted premises. The said order is relevant to the present proceedings and is reproduced hereinbelow :-

"13.10.2008

PRESENT : Counsel for Decree Holder Shri Vijay Zaveri

Counsel for Judgment Debtor Shri OP Khadaria

Photocopy of documents filed on behalf of Judgment Debtor, copy supplied.

Arguments have been heard on the application for stay under Order 21 Rule 29 and 58 read with Section 151 CPC moved by the Judgment Debtor. It is alleged that suit for declaration challenging the Judgment and Decree is pending in the Hon'ble High Court and is fixed for 11.11.2008.

Learned counsel for Decree Holder has opposed the application and stated that the suit of Judgment Debtor is fixed for arguments on maintainability. It is also alleged that no stay has been granted in the said suit.

However, learned counsel for the Judgment Debtor states that the said application for stay is pending and is fixed for 11.11.2008.

Learned Counsel for Judgment Debtor seeks adjournment, at request adjourn for 17.11.2008. In case no stay is granted execution would proceed.

Warrants of possession which were issued for 17.10.2008 are stayed till next date of hearing. Put up on date fixed i.e. 17.11.2008."

4. In fact, Mr. Garg stated that petitioner was able to obtain possession of tenanted premises only on 22nd October, 2008 and that too, by virtue of this Court's order dated 17th October, 2008. Mr. Garg pointed out that in the said order Hon'ble Mr. Justice S.N. Dhingra had directed respondent to personally appear in Court and to explain as to why he should not be sent to jail and penalised for non-compliance of his undertaking. Since the order dated 17th October, 2008 is relevant to the present proceedings, it is reproduced hereinbelow :-

"On 5th November 2007 respondent had given an undertaking that he shall hand over the peaceful and vacant possession of the premises being No.4-CC, Ashok Vihar, Delhi to the petitioner on or before 30th April 2008 and an amount of Rs.41,29226/-, deposited with the Court, be paid to the petitioner.

It is submitted by counsel for the respondent that the respondent later on came to know that the petitioner was not the owner of the premises and he filed a suit for declaring the decree as null and void.

I consider that irrespective of the discovery made by the respondent regarding new facts qua ownership of the premises, he was bound by the undertaking. It is to be noted that the JD (respondent herein) had contested right up to the Supreme Court and lost and it is only thereafter that this undertaking was given to the Court. In my view the conduct of the respondent shows that he has no intention of handing over the possession of the premises in question to the petitioner. Since the respondent has not abided by the undertaking furnished by him in the Court, he is bound to face the contempt proceedings apart from taking coercive measures by this Court for recovery of possession.

It is submitted by counsel for the respondent that he had vacated the premises but the same was lying locked still in possession of the respondent.

SHO Police Station Ashok Vihar is directed to break open the lock of the premises in question, make inventory of the goods lying there, if any, take those goods in his possession and hand over the peaceful vacant possession of the same to the petitioner by the evening of 27th October 2008.

The counsel for the respondent submits that there is a judgment of the Supreme Court where it is recorded that any decree obtained by fraud is non est. In case the respondent succeeds in his current suit filed for declaration of the decree as null and void, he would then have remedy of re-obtaining the possession back, but once an undertaking is given to the Court after having lost the matter right up to Supreme Court, he is bound to abide by the undertaking given by him in the Court and the undertaking cannot be brushed aside merely because the respondent is clever enough to file one suit after another. The respondent/JD shall appear in person on the next date of hearing as to why he should be sent to jail and be penalized for non compliance of his undertaking given to the Court on 6th November 2008.

Dasti to the petitioner as well as a copy of this order be sent to SHO Police Station Ashok Vihar for compliance.

List on 6th November, 2009."

5. Mr. Garg contended that respondent is still persisting with his contumacious conduct by not paying the admitted outstanding arrears of rent upto 30th April, 2008 amounting to Rs. 3,22,912/-. He further stated that respondent has not paid any amount for not handing over possession of the tenanted premises from 30th April, 2008 to 22nd October, 2008. According to Mr. Garg, the admitted rate of rent was Rs. 3,00,000/- per month.

6. On the contrary, Mr. O.P. Khadaria, learned Counsel for respondent submitted that respondent had vacated the tenanted premises on 15th April, 2008 and was always ready and willing to hand over possession of tenanted premises. He stated that no one from petitioner's side had contacted the respondent and, therefore, he could not hand over vacant physical possession of tenanted premises to petitioner. He stated that respondent had written numerous letters to petitioner to take over possession but all these letters were returned back to respondent with a noting that petitioner had changed its address.

7. He further submitted that there was no bar in law in filing a suit challenging petitioner's conveyance deed on independent grounds. He further stated that respondent had filed an application for stay in execution petition only in the month of October, 2008 as petitioner was not taking over possession of tenanted premises.

8. Mr. Khadaria also referred to the following judgments :-

A) ***Babu Ram Vs. Sudhir Bhasin*** reported in ***AIR 1979 SC 1528*** wherein it has been held as under :-

"It is well settled that while it is the duty of the court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the courts."

B) ***Jiwani Kumar Parekh vs. Satyabrata Chakravorty*** reported in ***AIR 1991 SC 326*** wherein it has been held as under:-

“In our opinion, before a party can be committed for contempt, there must be a wilful or deliberate disobedience of the orders of the Court. In the present case, we do not find that any such wilful or deliberate or reckless disobedience of our order dated Jan. 16, 1990, has been committed by the respondent to the contempt petition. Hence, the contempt petition is dismissed. There will be no order as to costs.

C) ***Sukhdev Singh Vs. Hon’ble C.J. Teja Singh and Hon’ble Judges of the High Court at Patiala*** reported in ***AIR 1954 SC 186*** wherein it has been held as under :-

“The power of a High Court to institute proceedings for contempt and punish when necessary is a special jurisdiction which is inherent in all Courts of Record. Section 1(2) of Criminal P.C. expressly excludes special jurisdictions from its scope. Hence, the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.”

9. Mr. Khadaria further submitted that in view of Section 13 of Contempt of Courts Act, 1971 if a party commits a breach of any order and if that breach is only of a technical nature, then a contemnor should not be punished. Section 13 of Contempt of Courts Act, 1971 is reproduced hereinbelow for ready reference:-

“13. Contempt's not punishable in certain cases-
Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.”

10. Having considered the rival contentions of both the parties, the factual position that emerges is that subsequent to a decree of ejectment dated 16th September, 2004, respondent had given

an undertaking in EFA No. 12/2007 that he would vacate the tenanted premises on 30th April, 2008 and would hand over its vacant peaceful physical possession to petitioner herein. However, I find that respondent herein has not placed on record any document to show that he contacted the petitioner to hand over possession of tenanted premises. On the contrary, during the course of arguments Mr. Khadaria argued before this Court that it is the petitioner who should have contacted the respondent to take over possession of the tenanted premises. This in my opinion, is completely contrary to the language and intent of the undertaking given by respondent.

11. In the reply filed by respondent to contempt petition, I do not find any averment or any document to show that respondent had written any letter to petitioner agreeing to hand over vacant peaceful physical possession of tenanted premises. Moreover, even if petitioner was either not willing to take back possession of tenanted premises or was not responding to respondent's communication, the only alternative for respondent was to move the Court, to which he had given an undertaking, to deposit the keys. Instead of adopting such a course, which any reasonable law abiding citizen would have adopted, respondent herein not only filed an application in petitioner's execution petition under Order 21 Rules 29 and 58 of CPC but also obtained stay of warrant of possession issued in petitioner's favour. Respondent did not stop at that, he even went to the extent of filing a civil suit being CS(OS) No. 1978/2008 praying for a declaration that ejectment decree dated 16th September, 2004 be declared a nullity, even though it formed the foundation of execution

proceedings in which respondent himself had given an undertaking to vacate the tenanted premises.

12. Moreover, on a perusal of the present contempt proceedings, I find that my learned Predecessor on 17th October, 2008 had passed an order wherein he has given detailed reasons as to how the respondent had acted in breach of his undertaking and as to how the SHO, PS Ashok Vihar, Delhi had to be directed to break open the locks of tenanted premises. By the said order dated 17th October, 2008, my learned Predecessor had summoned respondent to appear in person as to why he should not be sent to jail and penalised for non-compliance of his undertaking.

13. From the aforesaid facts, it is apparent that respondent has committed a wilful and deliberate breach of his undertaking dated 30th October, 2007. In fact, the proceedings initiated by respondent subsequent to his undertaking, leave no doubt that he tried to obstruct the course of justice and tried to bring the institution of judiciary into disrepute by filing multifarious proceedings. In my opinion, the conduct of respondent interfered with the due course of justice and he is held guilty of contempt of Court. In fact, it is necessary to do so, to uphold the majesty of law and dignity of courts as well as sanctity of undertakings furnished before courts.

14. Mr. Khadaria states that keeping in view the educational qualification of respondent as well as his age, some leniency should be shown to respondent. I am of the view, that as respondent is an educated man, and is well conversant with

letters of law, there was a higher obligation and duty cast upon him not to violate/breach his undertaking in the wilful manner that he did. Consequently, his educational qualification is a factor which weighs against the respondent and not in his favour.

15. Keeping in view respondent's contumacious conduct, I sentence the respondent to one month simple imprisonment along with a fine of Rs. 2,000/-. Respondent is also directed to pay use and occupation charges from 30th April, 2008 (when he undertook to vacate the tenanted premises) to 22nd October, 2008 (when possession of tenanted premises was handed over to petitioner by SHO, PS Ashok Nagar) at the agreed rate of rupees three lacs per month. The respondent would also have to pay to petitioner admitted outstanding rental dues to the tune of Rs. 3,22,912/- for period upto 30th April, 2008.

15. At this stage, Mr. Khadaria prays for suspension of sentence. However, keeping in view the times that I had adjourned the matter to enable the respondent to pay the outstanding dues, I feel this request is meritless and is accordingly rejected.

16. With the aforesaid observations, present petition is allowed.

17. Order dasti under the signature of Court Master.

MANMOHAN,J

MARCH 05, 2009
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